IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1091 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAMAN LALSING CHAUHAN

Versus

STATE OF GUJRAT

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Appearance:

1. Criminal Appeal No. 1091 of 1993

MR PM VYAS for Petitioner No. 1

MR KG SHETH, APP, for Respondent No. 1

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CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 21/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.C.PATEL)

1. The appellant was the accused in Sessions Case No.10 of 1992. The learned Sessions Judge, Panchmahals, at Godhra, who tried him, found him guilty of the offence punishable under Section 302 of I.P.C. and awarded life

sentence.

2. The charge against the accused was that he gave axe blows to one Rayjibhai Somabhai Bhil while he was sleeping outside his house at about 1 o' clock on 8.5.1992.

3. The prosecution case rested mainly on two eye-witnesses. One is Chitiyabhai somabhai-P.W.2, who was the brother of the deceased Rayjibhai. According to his evidence, they were four brothers. Narsing was the eldest and deceased-Rayji was younger than him. The youngest brother was Shankarbhai. At the time of incident, he and Rayji lived together in the same house. Rayji's wife had already died and he had no issue. Chitiya too had no child and he adopted a daughter of his brother-Shankar. They belonged to the Bhil Bhabhor tribe. Previously, they were living on land bearing Survey No.71/1. But, at that time, the appellant-Raman Lalsing and others had raised a dispute with his brother and hence, they shifted to Survey No.60. A Panch meeting was held in the village and there was a compromise. However, the appellant had again told his brother Rayji not to cultivate the land during the current year and threatened to kill him. On 8.5.1992, they went to bed at about 10 o' clock after having meals at about 6 or 7 o' clock in the evening. Rayji was sleeping in the first cot, Chitiyabhai was sleeping in the second cot, and in the third cot, his daughter-Shanta and her mother were sleeping. Thus they were sleeping in the courtyard. Late at night, they heard cries of Rayji and they all woke up. They saw the appellant armed with an axe standing near the leg of Rayji. They awoke while the appellant was about to flee after giving the axe blow. They had identified him. The appellant then fled towards the jungle. They had identified him in the star light. Rayji had received an axe blow on his forehead and he had a bleeding injury. Chitiya gave shouts and his brother Shankar and other people came running there. Rayji was breething faintly. Chhagan Narsing and Shankar were sent to fetch a tractor but they came back since it was not available. However, by that time, Rayji had already died and then they went to the house of the Sarpanch and told him about the incident. Thereafter, they came back to the scene of the offence and then he and Chhagan went to Bariya Police Station to lodge a complaint. The police recorded the complaint at 9.35 in the morning.

4. The other eye-witness is Shantaben-P.W.3, who is the daughter of Shankarbhai and who has been adopted by Chitiyabhai. She too was sleeping along with other

people when the incident occurred and she also awoke on hearing the cries. According to her, when they awoke, the appellant had already given an axe blow to her uncle and they saw him running away with the axe. They identified him in the star light. She also said that she had found an axe among the heap of stones near her house in the morning and when the police came at 10 o' clock in the morning, she produced it before them.

5. The evidence of Dr. Girendra Kanjibhai, who was the Medical Officer in Devgadh Bariya General Hospital, shows that he carried out postmortem at about 5 o' clock in the evening on 8.5.1992. According to him, there was incise wound present over left upper eyebrow horizontal 3" x 1 1/2" x 1 1/2" in size and left eyeball was cut off and destroyed completely. Brain material protruded from the wound. In his opinion, the cause of death was shock following the fracture of left frontal bone and internal haemorrhage. Her said that the said injury could have been caused by the axe which was shown to him and it was sufficient in the ordinary course of nature to cause death.

6. It was also in evidence that the axe which was recovered from the place of the incident was stained with blood of the same group as that found on the piece of bedding on which the deceased was sleeping.

7. It is obvious that the above evidence is sufficient to bring home the charge to the appellant. The learned advocate for the appellant could not point out any circumstances on the record which would shake the credibility of the two eye-witnesses. No material contradictions have been brought out in their evidence which would render their version unbelievable. They have told the story in a natural manner and there is no reason to disbelieve them. In the circumstances, the learned Sessions Judge rightly came to the conclusion that it was the appellant who committed the offence charged to him. There is no substance in the appeal and the same is dismissed.

[ M.C. PATEL, J. ]

[ A. L. DAVE, J. ]

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